IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9357 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

IBRAHIMBHAI ISMAILBHAI RATHOD

Appearance:

MS ROOPAL R PATEL for the Petitioner

MR ND SONGARA for MR GK RATHOD for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 01/10/2003

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today.

The learned advocate Mr.Songara waives service of rule.

With the consent of the learned advocates the matter is heard and disposed of today.

The petitioner - Gujarat State Road Transport Corporation (hereinafter referred to as 'the Corporation') challenges the judgment and order dated 8th October, 2002 passed by the learned Labour Judge, Amreli in Reference LCA No.518/1998.

It appears that the respondent - workman was appointed as a bus driver in the Corporation some four years before 20th April, 1993. The workman remained absent from service since 20th April, 1993 without prior leave or intimation. For his unauthorized absence from service a disciplinary action was initiated against the workman. The unauthorized absence of the workman having been proved, under order dated 29th September, 1994, the workman was ordered to be dismissed from service. Feeling aggrieved, the workman raised industrial dispute in the year 1998. The same was referred to the learned Labour Judge, Amreli and was registered as above.

Before the Labour Court the workman took the plea that during the period of his absence from service the workman was sick. The workman was suffering from tuberculosis and had taken treatment for the same as indoor patient. During the period of treatment the workman was not available at his residence. The workman also maintained that he had informed the Corporation about his sickness by a telegram. However, the plea taken by the workman has been proved to be an afterthought. The workman did not produce any evidence of his sickness. In the circumstances, the learned Labour Judge has believed that the workman did remain absent from service without rhyme or reason. The plea of sickness was also not sustainable. However, the learned Judge was of the opinion that the punishment of dismissal from service was too harsh. In exercise of power conferred upon the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') the learned Judge set aside the order of punishment and substituted the punishment of withholding of two increments with future effect. In the result, the learned Judge has ordered that the workman be reinstated in service and be paid 25% of the backwages. Feeling aggrieved, the Corporation has preferred the present petition.

Ms.Patel has submitted that the learned Labour Judge has committed an error in interfering with the punishment imposed by the Corporation. It is settled proposition of law that imposition of punishment is the function of the disciplinary authority and the Labour Court shall not interfere with the same unless the punishment imposed is unconscionable or shockingly disproportionate to the guilt established against the workman. She has also submitted that the learned Judge has not taken into consideration the delay in raising the industrial dispute. Though the dispute has been raised belatedly the workman has given no explanation for such delay. In the circumstances, the learned Judge ought not to have ordered reinstatement of the workman nor should have the workman been rewarded by payment of backwages or even part of it.

Mr.Songara has supported the judgment. He has submitted that the workman was sick and, therefore, he could not report for duty. Mr.Songara has further submitted that pending this petition the workman has been reinstated in service on 21st June, 2003. The same may not now be disturbed.

I do believe that the learned Labour Judge has erred threefold. First; the learned Judge has not taken into consideration the fact that the workman was in service only for four years and he remained absent from service without rhyme or reason. Such absence from service not only causes administrative difficulties but also causes untold inconvenience to the people at large. The indisciplined behaviour of the workman should be discouraged. Second; though the learned Judge has noticed that there was a delay in raising the industrial dispute the same has not been taken into consideration particularly when the workman has failed to explain the said delay. In my view, the necessary inference should be that the workman was gainfully employed during this period and was not interested in the service of the Corporation. Third; the learned Judge has also overlooked the fact that the workman had taken a false plea of sickness. The workman having said that he was taking indoor treatment for tuberculosis he has not produced an iota of evidence for such treatment, medical expenses, etc. Such false plea should not be entertained by a court of law and no indulgence should be granted in favour of the workman who takes a false plea.

It is true that the Hon'ble Supreme Court has time and again said that unless the penalty imposed upon the workman is unconscionable or shockingly

disproportionate to the guilt proved the power under Section 11-A of the Act shall not be exercised. The learned Judge has not considered that the penalty of dismissal from service imposed upon the workman was disproportionate to the guilt proved against him or not. In my view, such indisciplined behaviour which results into administrative difficulties and also untold inconvenience to the people at large should not be tolerated. Indulgence in the matters of discipline or lack of it undermines the discipline in general in public services.

However, in the present case, since the learned Judge has imposed minor punishment upon the workman and pending this petition the workman has been reinstated in service, though subject to the result of this petition, considering the young age of the workman, I do not consider it expedient to interfere with the order of reinstatement made by the learned Labour Judge. However, keeping in view peculiar facts of the case recorded hereinabove the order made by the learned Labour Judge shall stand modified as follows :-

"The order of dismissal from service of the workman made on 30th September, 1994 stands quashed and set aside. The workman shall be entitled to reinstatement in service. The absence of the workman from service from 30th September, 1994 till 20th June, 2003 shall be regularized as extra-ordinary leave without pay. The punishment of withholding of two increments with future effect imposed by the learned Labour Judge shall be made effective from the date the workman is reinstated in service i.e. 21st June, 2003."

The workman shall also give an undertaking to the Corporation to serve the Corporation henceforth regularly and scrupulously and that the workman shall not remain absent from service without prior leave/intimation.

Such undertaking shall be given to the Corporation within three weeks from today. Any breach of the aforesaid undertaking may entail a disciplinary action against the workman.

The petition is allowed in the above terms. Rule is made absolute accordingly. The parties shall bear their own costs.

(Ms. R.M.Doshit, J.)

/sakkaf